COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NANITAL

WRIT PETITION NO. 1820 OF 2002 (S/B)

IC-26497A, Col. S.C. Gupta,
S/o Sri Gyan Prakash, R/o 178 Bara Bazar,
Mallital, District Nainital

..... Petitioner.

Versus

1. Union of India, Ministry of Defence
2. The Under Secretary, Ministry of Defence

.....Respondents.

Sri Arvind Vashisth, learned counsel for the petitioner.
Sri Pradeep Joshi, learned standing counsel for Govt. of India

Dated: 23.02.2006

Coram: HON'BLE P.C.VERMA, J.
HON'BLE B.C.KANDPAL, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned order dated 05.08.1998 (Annexure No.1) and further a writ a mandamus directing the respondents to grant the disability pension to the petitioner and interest at the rated of 12% per annum.

2. Brief facts of the case as narrated by the petitioner are that he was commissioned in Indian Army on 06.08.1967 and retired from service on superannuation on 31.05.1997. Thereafter, he rejoined the service again on re-employment and was posted as DQ.HQ 6 Mountain Division till August, 2001. In August, 2001, he was transferred to Station Headquarters, Nainital as Station Staff Officer and continues to service till date. The case of the petitioner is

that he was thoroughly examined by the Medical Board and was declared medically fit to join the medical service and during the course of serving, he was regularly being examined by the medical authorities as per laid down annual medical orders. The petitioner while posted at Jaipur after his successful tenure in high altitudes of Leh, Laddakh and Jammu & Kashmir suffered eye problem. The petitioner reported at Military Hospital, Jaipur in September, 1994 and after examination by the medical authorities, he was declared a case of "PERIVASC LITIS BOTH EYES WITH VITREOUS HAEMORRAHAGE IN LEFT EYE". A Medical Board was held at Military Hospital, Jaipur and the Medical Board recommended that the disability contacted during service and attributable to military service. The assertion is made on the basis of opinion of the Senior Advisor Ophthalmology, which has been annexed as Annexure No. 1 to the writ petition. The condition of the eyes of the petitioner kept further deteriorating and he frequently had to visit Army Hospital. In October, 1995, petitioner's right eye had fraction retinal detachment and he was transferred to Shandkar Netralaya, Madras for eye operation. At Madras Shanker Netralaya, "Vitreoutional Surgery with Endolaser Photocoagulation" was carried out. In February, 1996, he again reported to Army Hospital, Delhi for the opinion of Senior Advisor, Ophthalmology before finalization of release medical board for discharge on superannuation. The Senior Adviser, Ophthalmology recommended permanent low medical category (E-2) and 30% Disability. The petitioner was communicated vide letter No. 1310/2C-26497/Engr/Org-9(C)/179/97/PA4(d) dated 05.08.1998 in which it was stated that he was not considered fit for award of disability pension. The petitioner made a representation against this order and contested his case

that he was fit to be paid the disability pension. The case was again reconsidered in the light of the representation made by the petitioner. The said representation of the petitioner was treated as appeal and the Appellate Authority vide its letter dated 27.04.2001 again found that the petitioner was not entitled for disability pension under the Pension Regulation for the Army, 1961, Part-I. The petitioner again written to the authorities to consider his case vide his letter-dated 10.05.2001 and the petitioner has not received any reply thereof. Hence the petitioner has filed this writ petition.

3. The main ground of the petitioner to claim the relief is that the Medical Board of the petitioner was held before discharge from the Army Headquarter and the Senior Ophthalmology Advisor recommended permanent low Medical Category (E-2) and disability assessed at 30%. The Medical Board held before attaining the age of superannuation and the medical board authorities recommended disability attributable to Military Service.

4. A counter affidavit has been filed in which it has been stated that the petitioner was commissioned in the Army on 06.07.1967 and was retired on 31.05.1997 after attaining the age of superannuation in low Medical Category (shape-2). The Release Medical Board (RMB) held on 03.03.1997 viewed his ID "Bilateal Retinal Vasculities" as neither attributable nor aggravated by his military service and assessed his disability at 30% for two years at the time of release from service. These views were upheld by the competent Medical Authority in the office of Dte Gen Armed Force Medical Services, whose views are as under:-

> *"ID detected in September, 1994 when he reported with complaints of diminished version and floats in front of left eye. All Inv. Were normal. Vision Rt eye 6/12. Funds examinations revealed prevasulities both eye with vitreous hemorrhage Lt. Eye.*

He was given Att followed by vitreous surgery and entoleter photocoagulation. He was was placed in low Medical Category (CMA).
At RMB he was asymptomatic except for slight diminution of vision. Vision Rt. Eye 6/36 corrected to 6/9 with glasses, Lt Eye 6/12 corrected to 6/6 with glasses. Eye were quiet with normal tension. ID is constitutional disease. Onset in Pace area. No history of injury or infection. There was no delay in diagnosis or treatment. In view of the above, ID is neither attributable to nor aggravated my Military Service."

5. In view of the expert opinion of the competent Medical Board, the petitioner's application for payment of disability pension has been rejected on 05.09.1998. Since an expert body has given his expert opinion that Invalidating Disease was not attributable to military service, therefore, he was not entitled for disability pension. This Court cannot sit in appeal over the opinion of the expert body.

6. Hence, we do not find any good ground to issue a writ of mandamus, as there is no statutory duty cast upon to pay the disability pension in these circumstances. The Statutory Disability pension is possible only on certain conditions to be fulfilled.

7. In view of the expert opinion, the conditions for payment of disability certificate are not fulfilled, therefore, we cannot issue any mandamus to the respondents to grant disability pension.

8. For the reasons recorded above, the petition is dismissed. No order as to costs.

(B.C.Kandpal, J.) (P.C. Verma, J.)

Rajeev Dang